

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

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INTERNATIONAL PACKAGING CORP.

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS  
UNION, LOCAL 328, AFL-CIO

Petitioner

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CASE 1-RC-21551

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer manufactures and distributes jewelry boxes and packaging, including point of purchase displays, pads, pouches, cards, eyeglass cases, ring binders, and other diversified products, to manufacturers and retailers.<sup>1</sup>

The Petitioner seeks to represent a unit consisting of all full-time and regular part-time production and maintenance employees employed by the Employer at its Cranston, Rhode Island facility, but excluding office clerical employees, managerial employees, professional employees, sales employees, confidential employees, casual employees, guards and supervisors as defined in the Act.

The Employer contends that it will be discontinuing its manufacturing operation and laying off most of its employees at the Cranston facility on or before December 31, 2002, and therefore the petition should be dismissed on the ground that no question concerning representation exists. The Petitioner argues that the Employer has failed to demonstrate with certainty that the dissolution of the bargaining unit is imminent or that the employment relationship between the Employer and its Cranston employees will terminate should the facility close, and that an election is therefore appropriate. I find, in agreement with the Employer, that the petition should be dismissed.

The Employer's President, John Kilmartin, testified that on September 6, 2002, the Employer purchased the assets of Gem Case Corporation, a competitor in the jewelry box product line.<sup>2</sup> The Employer hired all 66 Gem Case employees through a contractual agreement with a temporary staffing agency, Qualified Resources.

The Employer introduced testimony at the hearing that it intends to discontinue its manufacturing operation at the Cranston facility on or before December 31, 2002, and to vacate the facility by March 31, 2003.<sup>3</sup> Glen Thompson, former Chairman of Gem Case who negotiated the sale of that company's assets to the Employer, testified at the hearing. Thompson testified that in about April 2001, when the parties first began negotiations, Kilmartin told him that he intended to keep the Gem Case manufacturing operation open for three or four months, and then it would be folded into the Employer's Pawtucket, Rhode Island operation. Tim Harrington, President of Qualified Resources, corroborated that testimony. Harrington testified that at a meeting on August 30, 2002, the Employer's representatives informed him that they intended to continue manufacturing at the Cranston facility only through the end of 2002.<sup>4</sup>

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<sup>1</sup> In addition to the Gem Case facility in Cranston at issue in this proceeding, the Employer operates two facilities in Pawtucket, one in Central Falls, Rhode Island, and an overseas facility located in Scotland.

<sup>2</sup> Gem Case is currently in receivership.

<sup>3</sup> The Employer placed in evidence its lease for the Cranston facility, and testified that the expiration date in the lease, February 28, 2002, was a typographical error. I credit the Employer's testimony and find that the lease expires on February 28, 2003.

<sup>4</sup> The Petitioner relies heavily on a September 10, 2002 article in the *Providence Journal*, in which both Kilmartin and Thompson purportedly hailed the Employer's acquisition of Gem Case in that it would "safeguard" or "maintain" jobs (Employer's Exh. 8). Kilmartin explained that he was deliberately vague in his discussions of the Employer's business plans with the reporter because he had not yet spoken directly with the Employer's customers regarding its plans to close the facility and wanted to avoid causing them unnecessary anxiety. I find that the language in the newspaper article is insufficient to negate the testimony of the Employer's neutral witnesses.

Kilmartin testified at the hearing that, on September 6, 2002, the day that the Employer acquired the assets of Gem Case, he distributed a letter to Gem Case's employees in which he assured them that they would "have a job on Monday morning." Then, on September 18, Kilmartin distributed a second letter to employees at its Cranston facility, notifying them of the Employer's plan to cease manufacturing on or before December 31, 2002. In the letter Kilmartin advised employees that when manufacturing ceased they would either be transferred to its Pawtucket facility,<sup>5</sup> offered alternative employment through Qualified Resources, or be permanently laid off. According to Kilmartin's testimony at the hearing, the Employer intends to retain three to five employees in order to complete the shutdown of the Cranston facility, and to relocate up to 15 Gem Case employees to Pawtucket. The remainder will be laid off.

I find that the evidence supports the Employer's position. In cases where there is a claim that a petition should be dismissed because the imminent elimination of the bargaining unit would not permit a meaningful opportunity to bargain, the Board applies a case-by-case analysis. The period of time available between the direction of an election and the elimination of the unit is a major factor in that analysis. Where there has been seven to eight months or more until the completion of a construction project or the elimination of the unit, the Board has directed an election. See, e.g., NLRB v. Engineers Constructors, Inc., 756 F.2d 464 (6th Cir. 1985) (election directed on July 1, 1983; work to be completed by March or April, 1984; 8-9 months); General Electric Co., 101 NLRB 1341 (1952) (election directed on December 23, 1952; plant shutdown in mid-August, 1953; 7-8 months); But see The Longcrier Co., 277 NLRB 570 (1985) (decision and order December 23, 1983; projects to be completed September 1984 and January 1985; 9-12 months; petition dismissed). The Board has, however, refused to direct an election where six months or fewer remain before the project's completion. M.B. Kahn Construction Co., 210 NLRB 1050 (1974) (decision on review and order dated May 29, 1974; project to be completed June 1974; workforce projected to be reduced to "practically nothing" after that time; petition dismissed); Process Mechanical, Inc., Case 7-RC-18862 (April 13, 1989) (Not Reported in NLRB Volumes) (Board order denying petitioner's request for review of the Regional Director's order dismissing the petition; 5-6 months)(decision and order February 2, 1989; job to be completed in mid-June or early July, 1989; 4-5 months); Fraser-Brace Engineering Co., Inc., 38 NLRB 1263 (1942) (decision and order February 16, 1942; project completion date, and most or all employees laid off by end of March 1942; petition dismissed); Fruco Construction Co., 38 NLRB 991 (1942) (decision and order February 9, 1942; estimated project completion date of April 1, 1942; most employees to be laid off by end of February or March 1942; petition dismissed).

I find that the evidence supports the Employer's forecast that it will cease its manufacturing operation at the Cranston facility by the end of 2002, and that the petitioned-for unit will be eliminated by the end of March 2003. Because the evidence indicates that relatively few of the employees currently working at that facility are likely to be offered employment at the Employer's Pawtucket facility, no useful purpose would be served by an election. M.B. Kahn, supra.

Accordingly, the Employer's motion to dismiss the petition is granted.

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<sup>5</sup> Currently, the Employer employs approximately 650 employees at its Pawtucket facility.

## ORDER

IT IS HEREBY ORDERED that the petition filed herein is dismissed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision must be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 18, 2002.

/s/ Rosemary Pye

Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 4th day of October 2002.

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